

the conclusion of the case should be based upon the reasonable value of said attorney's services *in quantum meruit*.¹ She does not object to the amounts awarded in the ALJ's Order.

On June 30, 1994 Ms. Barger filed a Notice of Withdrawal of Attorney, Assertion of Attorney's Fee Lien and Application for Hearing to Determine Attorney's Fees. In that pleading Ms. Barger cited "irreconcilable differences" as the basis for her withdrawal from further representation of claimant and claimed an attorney's fee lien "for 25% of the settlement as and for attorney's fees and \$148.55 for out of pocket expenses." Administrative Law Judge Floyd V. Palmer entered an Order Approving Withdrawal of Counsel on August 5, 1994. Ms. Barger's itemization of time spent, Exhibits 1 and 2 to the August 6, 1999 hearing, show totals of 45.5 and 61.4 hours respectively. At the hearing Ms. Barger also claimed expenses totaling \$147.10 (Exhibit 3).

The Statement Regarding Attorney Fees prepared by David O. Alegria was offered at and made a part of the record of the November 19, 1997 Settlement Hearing proceedings. That document shows that Mr. Alegria is claiming attorney fees "in the total amount of \$2,250.00, which is 25 percent of the amount of compensation to be recovered and paid on behalf of the employee." In that same document Mr. Alegria also states that "approximately 30 hours were expended by me in the course of the legal representation of the employee." The contract of employment between claimant and Mr. Alegria was entered into on March 5, 1995.

Ms. Barger's contract with claimant, dated March 6, 1993, which is Exhibit 5 to the Transcript of the August 6, 1999 Motion on Attorney Fees Hearing, provides:

It is further understood and agreed that my said attorney shall not be entitled to any compensation for her services, unless and until settlement or collection of my claim has been made, and that my attorney shall have no right to compromise or settle my claim without my consent, but may litigate the claim. My attorney may file for a formal hearing before the Workers' Compensation Director at her option, and this contract gives my consent thereto. It is further understood and agreed that shall I at any state of the proceedings, for any reason, desire to terminate this contract I agree to pay my said attorney what they determine to be in a reasonable amount for their services performed and expenses incurred prior to the time of termination of the contract as shown by an itemization thereof.

It is interesting to note that the Workers' Compensation Contract for Employment of Attorney between claimant and Mr. Alegria contains a similar provision:

It is further understood and agreed that if I desire to terminate this contract for any reason at any time, I agree to pay my attorneys what is determined to be a reasonable amount for their services performed and litigation expenses incurred prior to the time of termination of the contract. It is understood that the

¹ See Madison v. Goodyear Tire & Rubber Co., 8 Kan. App. 2d 575, 663 P.2d 663 (1983).

Director of Workers' Compensation has jurisdiction over the reasonableness of fees.

The fact that Ms. Barger withdrew instead of being terminated does not prevent counsel from receiving compensation for her services.² She represented claimant beyond the December 10, 1993, preliminary hearing and the appeal of that Order to the Board. She provided valuable services to claimant which resulted in claimant receiving medical treatment and, in part, in claimant's ultimate ability to conclude his claim for a compromise amount. Ms. Barger does not dispute the amount awarded to her by the ALJ. Therefore, the Appeals Board finds the award of \$600.00 to Ms. Barger to be a reasonable and appropriate amount under the facts and circumstances of this case.

Mr. Alegria also questions "whether Claimant's attorney should be required to pay one-half of the cost of the transcript of the hearing of August 6, 1999." Judge Avery's August 12, 1999 Order does not specify who is to pay the costs. But at page 11 of the transcript of the August 6, 1999 proceedings Judge Avery announced that "the expenses for the court reporter will be billed jointly." If that is interpreted to mean Mr. Alegria and Ms. Barger are to each pay one-half, it is a reasonable division and should also be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Brad E. Avery dated August 12, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David O. Alegria, Topeka, KS
John G. Atherton, Emporia, KS
John A. Bausch, Topeka, KS
Diane F. Barger, Wichita, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director

² See Rucker v. Rio Optical Corporation, 20 Kan. App. 2d 233, 885 P.2d 1270 (1994).